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do not cover human beings. The Examiner rather says that the towels of *Carter, et al.* can clearly be used to clean the surfaces mentioned above, that is, bathroom floors when they get wet, kitchen counters when they get wet, etc.

The Examiner, however, does not answer the all important question as to what indicia would be used in order to allow a user to clean the bathroom floor. Will the user use the "HIS" towel or will the user use the "HERS" towel? We don't know. That is, there is absolutely no indicia indicating the particular application for which the cleaning purpose is intended, as claimed. Specifically excluded from the claims are human beings. The prior art clearly gives no teaching to use any indicia for "bathroom floor." Thus, the Examiner cannot accurately maintain that the indicia contained on the towels of *Carter, et al.* indicates a claimed intended application for cleaning. Rather, the Examiner can only point to the fact that there is some indicia on the towel. This is not in dispute. Rather, what is in dispute is whether or not the towels of *Carter, et al.* teach, as presently claimed, a particular cleaning application associated with the indicia. Applicant respectfully submits that it does not and that the Examiner's rejection is blatantly utilizing hindsight reconstruction.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. MPEP §2143; *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992); MPEP §2142.

Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a *prima facie* case of obviousness with respect to the rejected claims. Again,

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which towel is used to clean the floor? "HIS?" "HERS?" We do not know. How, therefore, can *Carter, et al.* teach indicia represented the intended cleaning application, as claimed? The Examiner's rejection of the subject claims is improper, and should be withdrawn.

**Rejection Under 103 Based Upon Scotch-Brite Reference:**

The Examiner also rejected Claims 1-18 based upon a reference to the packaging for a *Scotch-Brite* scour pad with indicia, alone or in combination with other references.

Applicant respectfully requests that the Examiner reconsider this rejection. The Examiner points to the fact that the wrapper of the *Scotch-Brite* pad teaches that another product, "*Scotch-Brite* Cookware Sponge," can be used on tubs, while the wrapper for the instant reference, the *Scotch-Brite* scour pads, indicates that it is to be used on cast iron pots and includes a symbol of a pot. As an initial matter, the Applicant points out that the *Scotch-Brite* cookware sponge in no way, shape or form bears indicia of an intended cleaning application. Once removed from its package, the wrapper is thrown away. What serves as the "indicia" indicating the claimed cleaning application then? Nothing.

Moreover, it is clear that simply the reference to the other product, that is, the "*Scotch-Brite* Cookware Sponge," provides absolutely no evidence that this other product or its packaging bear indicia of any kind. In fact, the Examiner has offered no evidence that the "*Scotch-Brite* Cookware Sponge" that is said to be used on tubs does, in fact, bear any indicia whatsoever. Moreover, the Examiner has failed to produce any evidence whatever that the "*Scotch-Brite* Cookware Sponge" bears indicia corresponding to and relating to its intended cleaning application. Thus, the Examiner's rejection on the basis of the *Scotch-Brite* Scour Pads must fail as failing to teach a plurality of cleaning articles, each having separate indicia corresponding to a separate intended cleaning application. There is absolutely no reference whatever in any of the references, any of the teachings of the *Scotch-Brite* packaging or the combined references to reach the claimed invention. Reconsideration is respectfully submitted.

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**Objective Evidence of Non-Obvious:**

In *Graham v. John Deere Company of Kansas City*, 383 U.S. 1, 17-18, 86 S. Ct. 684, 694 (1966), the United States Supreme Court set forth the following guidelines for making a 35 USC §103 determination:

Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

Attached hereto are the Declaration of Applicant and photographs of samples of recently introduced products from 3M showing, *inter alia*, a package having a plurality of cleaning articles, at least one of which cleaning article bears indicia indicating one intended cleaning application and another cleaning article bearing indicia indicating a separate intended cleaning application. For example, the first of the three pads sold in the package shows fish. The second of the pads shows pots and pans. The first bears a cleaning indication for fish tanks and pet-related supplies and the other indicia for food utensils. This information has been acquired recently and is submitted to be evidence of infringement of the presently pending claims by others, demonstrating again the non-obviousness of the claimed invention.

**Conclusion:**

Based upon the foregoing, the Applicant respectfully requests entry of this paper in the record to place the application in better condition for appeal. Alternatively, the Applicant respectfully submits that the arguments above should be deemed persuasive and that the Examiner should reconsider and allow each of the pending claims contained herein.

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Respectfully submitted,

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By: PRICE, HENEVELD, COOPER, DEWITT & LITTON, LLP

Dated: March 2, 2004

A handwritten signature in black ink, appearing to read "Steven L. Underwood", is written over a horizontal line.

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